

S.B. CIVIL WRIT PETITION NO.6536/2007.

Vijay Narain
Vs.
State and ors.

Date of Order :

27/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri G.C. Gupta for the petitioner.

The petitioner has challenged the order dated 12/12/2000 passed by the learned trial court whereby decree of specific performance was passed in a suit in which petitioner was defendant. The aforesaid judgment & decree was challenged by the co-defendant of the petitioner in civil regular appeal which was dismissed. The remedy of writ is not available for which, a specific provision under the Code of Civil Procedure, 1908 is provided for. If the remedy of appeal is available to the petitioner under the law, he may file second appeal in accordance therewith. Merely because the petitioner did not seek to challenge the judgment & decree passed by the trial court in the first appeal and that judgment and decree was challenged by his co-defendant, is no ground to permit the petitioner to assail the aforesaid two judgments in the writ jurisdiction. If under the law petitioner consider that remedy of appeal is available to him against two judgments by

virtue of the fact that he was already respondent in civil regular first appeal decided by the first appellate court on 4/8/2003, he could avail of that remedy by filing second appeal. At this stage, learned counsel for the petitioner expressed difficulty in challenging that judgment because the period of limitation has passed long back. If that be so, petitioner can also apply for condonation of delay to convince the court about the cause which prevented him from filing the appeal in time.

The writ petition being not maintainable is hereby dismissed.

(MOHAMMAD RAFIQ), J.

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